

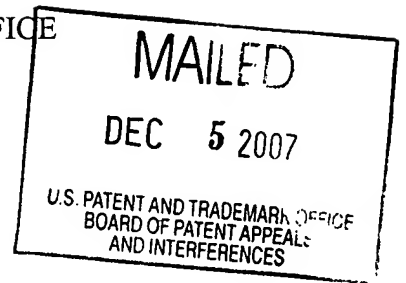
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte: STEPHEN BALDWIN, DUANE KRZYSIK
AND BOZENA NOGAJ

Application 10/660,319

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was received electronically at the Board of Patent Appeals and Interferences on December 4, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

An examination of the Image File Wrapper (IFW) reveals that the Appeal Brief filed December 18, 2006, lists the "Grounds of Rejection to Be Reviewed on Appeal"

[page 6] as follows:

1. Claims 1-6, 13-18, and 37-42 stand rejected under 35 U.S.C. §102(e) as being anticipated by Gatto et al. (U.S. 6,570,054).
2. Claims 7-12 and 19-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gatto et al. (U.S. 6,570,054).
3. Claims 1-6 and 10-18 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending U.S. Patent Application No. 10/659,967.

While the Examiner's Answer mailed June 4, 2007, states that "[t]he appellant's statement of the grounds of rejection to be reviewed on appeal is correct [page 2], the obviousness-type double patenting rejection was not set forth in the Examiner's Answer, "Grounds of Rejection" section. It should be noted that the double patenting rejection was included in the Final Rejection mailed July 26, 2006.

Section 1207.02 of the Manual of Patent Examining Procedure (MPEP)(Eighth Edition, Rev. 5, August 2006) states, in part:

If any rejection is withdrawn, the withdrawal should be clearly stated in the examiner's answer under *>subheading "Grounds of Rejection Withdrawn" in the section "Grounds of Rejection to be Reviewed on Appeal."< Grounds of rejection not *>specifically withdrawn by the examiner and not set forth< in the examiner's answer are usually treated >by the Board< as having been dropped, but may be considered by the Board if it desires to do so.

CONCLUSION

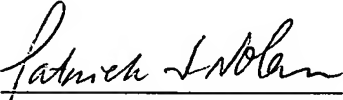
Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) issue and mail a Supplemental Examiner's Answer correcting the Grounds of Rejection section; and

2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/tsj

cc: SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102